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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
DONALD L. APPLEBY,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 82-32

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from the denial of a flood control zone permit application, came before the Pollution Control Hearings Board, Gayle Rothrock, Chairman, and David Akana (presiding), at a formal hearing in Lacey, on September 10, 1982.

Appellant appeared pro se and with his spouse, Dolores Appleby; respondent was represented by Robert E. Mack, Assistant Attorney General. Jean M. Erickson, court reporter, recorded the proceedings.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes these

FINDINGS OF FACT

I

Respondent is an agency of the State of Washington created and existing under the provisions of chapter 43.21A RCW and vested by that chapter with the powers, duties, and functions provided for in chapter 86.16 RCW, the State Flood Control Zone Statute.

II

Appellant owns real property within Yakima County located in the SW 1/4 NE 1/4 NE 1/4 of Section 8, Township 13 North, Range 18 E.W.M. The six and one-half acre parcel is located along the banks of the Naches River and lies entirely within the boundaries of state flood control zone number 9.

III

Appellant or members of his immediate family has lived on the property for seven years. He has owned the property for a longer period of time. During the period of his ownership, there has always been a single family residence located on the site.

IV

There is another structure on the property which is used as a barn. Appellant presently raises 26 head of cattle on the property and intends to have 40 head in the future.

V

On January 18, 1982, appellant filed an application for a flood control zone permit with respondent to add a bedroom and a front room on his existing residence.

Respondent considered the application and investigated the site. It found that the residence and barn were located within the 100 year frequency hydraulic floodway of the Naches River. The residence was located on a low island between the Naches River and a meander channel. During periods of high water, the bridge transversing the channel sometimes has been submerged, thereby severing the only access to the site. Under the doctrine of self-help, appellant believes he has solved the access problem by building another bridge over the channel. He also expects to receive State Department of Fisheries' approval for certain "clean out" work in the Naches River to reduce the flow through the channel.

VI

The projected 100 year frequency flood elevation at the river is 1188 feet mean sea level (msl). Respondent roughly estimates that appellant's property is at elevation 1185' \pm 2' msl. Appellant asserts that there is a 30 inch crawl space beneath the floor of his house. Based upon the quality of the evidence, it is not possible to find that the first floor of the house would be above the 100 year frequency flood.

VII

Appellant has one of the two proposed rooms already nearing completion. He would be content to have that one room permitted and forego the other room.

Appellant and his spouse both demand to be able to build in the floodway at their own risk.

VIII

The Naches River, at and near the site, is a very meandered, braided watercourse. The river course changes with each flood water occurrence to varying extents.

IX

Respondent determined that the existing residence was subject to appreciable damage by flood water of a 100 year frequency flood. It was also likely to be dislocated by a flood of that magnitude and posed a threat to life, health and property. The request to expand the structure was denied which decision was appealed to this Board.

X

Appellant's application involves the modification to an existing single family farmhouse. No significant change in water, sewer or utility system results from the proposed modification.

XI

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

CONCLUSIONS OF LAW

I

Applications for flood control zone permits that comply with WAC 508-60-040,060, and 070 will be granted.

II

WAC 508-60-040 provides in part that:

1 (1) The structures or works are designed so as
not to be appreciably damaged by flood waters.

2 (2) The structures or works shall be firmly
anchored or affixed to the realty in order to prevent
3 dislocation by flood water and damage to life,
health, and property.

4 (3) The structures or works will not adversely
influence the regimen of any body of water by
5 restricting, altering, hindering, or increasing flow
of the flood waters in the floodway or flood channel
6 expected during a flood up to a magnitude of one
hundred year frequency. (In consideration of this
7 provision the department shall determine whether the
structures or works either alone, or in combination
8 with existing or future similar works could adversely
influence the efficiency or the capacity of the
9 floodway or adversely affect existing drainage
courses or facilities. The determination of these
10 effects shall be based on the assumption that the
floodway encroachment resulting from any proposed
11 structures or works will extend for a significant
reach of the stream together with an encroachment
12 equal in degree on the opposite side of the stream.)

13 (4) The structures or works are not designed
for, or will not be used for either (a) uses
associated with high flood damage potential or (b)
14 dwellings for human habitation of a permanent nature;
provided that a new single family farmhouse or
15 substantial improvements to an existing single family
farmhouse may be permitted under the following
16 conditions.

17 (i) A new single family farmhouse must be built
as the replacement of an existing single family
18 farmhouse on the same farmsite. The house being
replaced shall be removed from the floodway in its
entirety, including the foundation. The permit shall
19 specify a date for completion of the above work.

20 (ii) The elevation of the lowest habitable
floor of the residence, including basement, shall be
one foot higher than (sic) the one hundred year flood
21 elevation.

22 (iii) New and replacement water supply systems
shall be designed to minimize or eliminate
23 infiltration of flood waters into the system.

1 (iv) New and replacement sanitary sewage
2 systems shall be designed and located to minimize or
3 eliminate infiltration of flood waters into the
4 system and discharge from the systems into flood
5 waters.

6 (v) All other utilities and connections to
7 public utilities shall be designed, constructed, and
8 located to minimize or eliminate flood damage.

9 (vi) There must be no potential site for the
10 farmhouse on the farmsite outside the floodway.

11 Subsection 1 is a design criteria which has not been sufficiently
12 illustrated to this Board by appellant. To approve an application,
13 the pertinent characteristics of the project must be adequately
14 described in a design to respondent and this Board.

15 Subsection 2 is an affixation criteria which involves design and
16 construction. The evidence was insufficient to show compliance with
17 this provision.

18 Subsection 3 is a stream influence criteria. There is yet no
19 design submitted to consider. How the regimen of the stream would be
20 affected appears speculative at this time.

21 Subsection 4 is a use criteria. The proposed addition of two
22 rooms to the existing single family farmhouse would not require
23 compliance with subsections 4(1, 111, 1v, v and vi). The evidence is
24 not clear with regard to subsection 4(11).

25 III

26 Based upon the record in this case, appellant has not shown that a
27 permit should have been issued. Although the Department's decision

could be affirmed on this basis, appellant should have an opportunity to provide the necessary information to respondent. It is possible that appellant can meet the criteria of WAC 508-60-040. Respondent can make a better evaluation if it were provided more information and fully investigated the request. Under WAC 508-60-060 and -070, respondent may require that additional work or construction be included if a permit is issued.

IV

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Findings the Board enters this

ORDER

Flood Control Zone Permit Application No. 10-2002-9 is remanded
for further consideration.

DATED this 22nd day of October, 1982.

POLLUTION CONTROL HEARINGS BOARD

David Akana

DAVID AKANA, Lawyer Member

Gayle Rothrock

GAYLE ROTHROCK, Chairman